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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 WENDEI L. P.,

9 Plaintiff,

v.

10 COMMISSIONER OF SOCIAL
11 SECURITY,

12 Defendant.

CASE NO. C18-5907 BHS

ORDER GRANTING
DEFENDANT'S MOTION TO
AMEND JUDGMENT AND
DENYING PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES

13 This matter comes before the Court on Defendant Commissioner of Social
14 Security's ("Government") motion to amend judgment, Dkt. 21, and Plaintiff Wendei L.
15 P.'s ("Plaintiff") motion for attorney's fees, Dkt. 23. The Court has considered the
16 pleadings filed in support of and in opposition to the motions and the remainder of the
17 file and hereby grants the Government's motion and denies Plaintiff's motion for the
18 reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On May 24, 2019, the Honorable Michelle Peterson, United States Magistrate
21 Judge, issued a Report and Recommendation ("R&R") recommending that the Court
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1 affirm the Administrative Law Judge's ("ALJ") partial denial of Plaintiff's request for
2 benefits. Dkt. 16. On May 31, 2019, Plaintiff filed objections arguing in part that a
3 conflict existed between the vocational expert's ("VE") opinion and the Dictionary of
4 Occupational Titles ("DOT"). Dkt. 17. In support of this argument, Plaintiff cited
5 evidence in the record that she asserted was the DOT. *Id.* at 3 (citing Tr. 196). On June
6 10, 2019, the Government objected. Dkt. 18.

7 On July 17, 2019, the Court declined to adopt the R&R concluding that the ALJ
8 failed to adequately explain the VE's deviation from the DOT. Dkt. 19. On August 15,
9 2019, the Government filed the instant motion arguing in part that the Court relied on a
10 clear error of fact. Dkt. 21. Plaintiff responded that same day. Dkt. 22.

11 On October 15, 2019, Plaintiff filed the motion for attorney's fees requesting an
12 award as the prevailing party. Dkt. 23. On October 21, 2019, the Government
13 responded. Dkt. 26.

14 II. DISCUSSION

15 A motion under Rule 59(e) is "appropriate in cases where the court has based an
16 order on a factual error." *Norman v. Ark. Dep't of Educ.*, 79 F.3d 748, 750 (8th Cir.
17 1996).

18 In this case, the Court based its order on a factual error. Plaintiff asserted that a
19 document in the record was the DOT. Dkt. 17 at 3 (citing Tr. 196). The Government
20 contends that the document is not the DOT and instead is a manual authored by a private
21 company, SkillTran. Although SkillTran purports to rely on the DOT, SkillTran's job
22 listing for the relevant job here, Reservations Agent, includes more limitations than the

1 DOT. Specifically, one of those additional limitations was that the Reservations Agent
2 job “may be repetitive and stressful.” Tr. 196. The Court relied on this limitation in
3 concluding that the ALJ committed error by failing to explain why Plaintiff could not
4 work in high stress environments yet could work as a Reservations Agent. Because the
5 Court’s reliance on the SkillTran document was misplaced, the Court agrees with the
6 Government that the judgment and order reversing and remanding should be vacated.
7 The Court denies Plaintiff’s motion for attorney’s fees because she is no longer the
8 prevailing party. A new order on the R&R and objections will issue in due course.

9 **III. ORDER**

10 Therefore, it is hereby **ORDERED** that Government’s motion to amend judgment,
11 Dkt. 21, is **GRANTED** and Plaintiff’s motion for attorney’s fees, Dkt. 23, is **DENIED**.

12 The Clerk shall vacate the Court’s previous order, Dkt. 19, and judgment, Dkt. 20.

13 Dated this 27th day of January, 2020.

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16 **BENJAMIN H. SETTLE**
United States District Judge